

1 **BEFORE THE SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **THOMAS T. PEERENBOOM,**)
4 Appellant,) **SHB NO. 93-62**
5 v.) **ORDER GRANTING**
6 **KING COUNTY and STATE OF**) **SUMMARY JUDGMENT**
7 **WASHINGTON, DEPARTMENT OF**)
8 **ECOLOGY,**)
9 Respondents.)
10 _____)

11 King County ("County"), on February 28, filed a motion for summary judgment. The
12 motion went to the merits of the case. The County asked the Shorelines Hearings Board
13 ("Board") to dismiss the matter, arguing that there were no genuine material issues of fact.
14 The County asked the Board to affirm the County's decision to deny the shoreline variance to
15 Mr. Peerenboom ("Peerenboom") as a matter of law.

16 Peerenboom, representing himself, filed a response on March 2, 1994.

17 On March 14, 1994, the County filed its reply. It included a motion to strike the
18 factual allegations contained in Peerenboom's response.

19 The Presiding Officer, offered Peerenboom, who is not an attorney, the opportunity to
20 submit an affidavit or declaration. Michael J. Sinsky, the County's attorney, dropped the
21 County's motion to strike, upon receiving a sworn declaration from Peerenboom, to be affixed
22 to Peerenboom's previous response.

23 The Board was comprised of: Robert V. Jensen, presiding; Richard C. Kelley,
24 James A. Tupper, Jr., Bobbi Krebs-McMullen and Robert Hinton.

25 The Department of Ecology ("Ecology") did not participate in the motion.

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2 The Board considered the record in this case, and in particular, the following
3 pleadings, which were filed in conjunction with the motion:

- 4 1) King County Motion for Summary Judgment;
5 2) Affidavit of Mark Mitchell in Support of King County Motion for Summary
6 Judgment (including attachments);
7 3) Response of Thomas T. Peerenboom;
8 4) King County Reply in Support of Motion for Summary Judgment; and
9 5) Reply Affidavit of Mark Mitchell in Support of King County Motion for
10 Summary Judgment.

11 Having considered these pleadings, we rule as follows:

12 I

13 Peerenboom purchased a residence on Ames Lake in the County in 1985. The property
14 is within a rural environment, under the King County Shoreline Master Program ("KCSMP").

15 II

16 The lot is approximately 60 feet wide and 300 feet long. It is one of over one hundred
17 similarly sized and shaped lots abutting the lake. The waterfront one-half of the property is
18 level with the lake frontage.

19 III

20 When Peerenboom bought the property, the house had an existing deck, extending
21 from the house, approximately 40 feet toward the water. About 300 square feet of this 1900
22 square foot deck, protruded into the shoreline setback area. Under the KCSMP, the setback
23 line was then (and is now) 20 feet upland of the ordinary high water mark.

24 IV

25 The County, inspecting the property as the result of a complaint, in January 1992,
26 discovered that Peerenboom had without any shoreline permit built a new deck across the
27 entire frontage of his lot. The deck covered approximately 700 square feet, and connected the
old deck with the water. It originally extended out over the lake to a float that had previously

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2 been placed on the lake. Peerenboom subsequently modified the structure so that it is now
3 located approximately two feet from the water's edge.

4 V

5 Peerenboom applied for a shoreline variance from the County, on August 14, 1992.
6 The County denied the variance on September 3, 1993. The County based its decision on the
7 following grounds:

- 8 1) The bulk, dimensional, or performance standards of the KCSMP have not
9 precluded reasonable use of the subject property for residential/recreational
10 purposes. The existing "white deck," with its $\pm 1,900$ -square-foot area,
11 presently contains approximately 300 square feet of area within the required 20-
12 foot shoreline setback. The "white deck" provides functional access to the
13 OHWM of Ames Lake and to the beach area which existed prior to the
14 construction of the subject deck addition.
- 15 2) There are no unique or extraordinary circumstances or features relative to the
16 subject property (size, shape, physical limitations) which would justify further
17 encroachment into the stipulated shoreline setback. The westerly one half of the
18 subject property is level approximately 65 feet of lake frontage. The request for
19 a shoreline variance is necessitated as a result of the applicant's own action in
20 constructing the subject deck addition without the benefit of permits from King
21 County.
- 22 3) The subject is incompatible with the general character of the shorelines around
23 Ames Lake in that permitted or authorized structures of a similar design and
24 circumstance do not exist such as to warrant the granting of this request.
- 25 4) Approval of this variance authorization of the subject deck would therefore
26 constitute a grant of special privilege and would establish an undesirable
27 precedent with the potential for substantive cumulative impacts to the shoreline
environment of Ames Lake.
- 28 5) If the subject shoreline variance were approved, the remaining beach area would
29 be virtually eliminated, resulting in the entire shoreline setback being covered
30 by structures. Such a circumstance would be inconsistent with the policy intent
31 of RCW 90.58.020.

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2 VI

3 The County also ordered that the deck be removed, and that the ordinary high water
4 mark "be restored to the satisfaction of King County Department of Development and
5 Environmental Services within 30 days from final action regarding this application".

6 VII

7 Peerenboom filed a request for review with the Board on October 4, 1993. Ecology
8 certified his appeal to the Board, under RCW 90.58.180(1), on October 29, 1993.

9 VIII

10 The Board has jurisdiction over the shoreline variance issues. RCW 90.58.180.

11 IX

12 The burden of proof is upon the party requesting review. RCW 90.58.140(7); WAC
13 461-08-170(9).

14 X

15 The Board has the authority to grant summary judgment, where there is no genuine
16 issue of material fact. See ASARCO v. Air Quality Coalition, 92 Wn.2d 685, 696-97, 601
17 P.2d 501 (1979) (holding that the Pollution Control Hearings Board, which is comprised of
18 three of the members of this Board, may issue summary judgments where the law so allows,
19 and there are no disputed material factual issues).

20 XI

21 We conclude that there are no genuine issues of material fact, and that the County is
22 entitled to a summary judgment as a matter of law.
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2 XII

3 Variances are designed as escape valves from imperfect land use ordinances. 3R.
4 Anderson, American Law of Zoning 3d, sec. 19.10 (1986). This mechanism allows
5 governmental entities to avoid application of a land use restriction, which literally applied
6 would deny a property owner all beneficial use of the property. Id. at sec. 20.02.

7 XIII

8 Variances are exceptions to the rule. The Shoreline Management Act ("SMA") is to be
9 liberally construed on behalf of its purposes. RCW 90.58.900; Clam Shacks v. Skagit
10 County, 109 Wn.2d 91, 93, 743 P.2d 265 (1987). Concomitantly, exceptions to its
11 regulations must be strictly construed. See Mead School Dist. v. Mead Education, 85 Wn.2d
12 140, 145, 530 P.2d (1975) (holding that the liberal construction command of the Open Public
13 Meetings Act implies an intent that the act's exceptions be narrowly confined).

14 XIV

15 RCW 90.58.100(5) authorizes local governments and Ecology to grant variance permits
16 for shoreline developments, "only if extraordinary circumstances are shown and the public
17 interest suffers no substantial detrimental effect". WAC 173-14-150(1) allows for variances to
18 be granted: "where there are extraordinary or unique circumstances relating to the property
19 such that the strict implementation of the master program will impose unnecessary hardships
20 on the applicant or thwart the policies set forth in RCW 90.58.020."

22 XV

23 Peerenboom has not presented evidence to demonstrate extraordinary circumstances, or
24 unnecessary hardship, which would entitle him to a variance. He has access to the water
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2 without the new deck. He has an ample existing deck, from which to enjoy the scenic beauty
3 of the lake.

4 XVI

5 We further conclude, that any hardship he has shown is self-induced. His building of
6 the deck, without legal authority, was his choice. The KCSMP has been in existence since
7 before he bought the property in 1985. A prudent buyer on the shorelines of the state is
8 charged with constructive knowledge of the restrictions of the SMA, which act was approved
9 by the people of the state as an initiative. A cursory reading of that act would lead a
10 reasonable person to realize that the general purpose local government within which the
11 property lies, has a duty to prepare, submit and obtain Ecology of a comprehensive land use
12 proposal for the shorelines in the area. The setback requirement was a legal limitation on the
13 use of the land, when he bought it. These circumstances do not qualify as a hardship under
14 the SMA and its regulations. Weinberg v. Whatcom County and Department of Ecology, at 8-
15 11, SHB No. 93-2, (1993) (holding that a purchaser of land with constructive knowledge of
16 shoreline restrictions, is not entitled to a variance which relieves him from those restrictions).

17 XVII

18 The evidence is unclear as to whether there are any other similar shoreline uses
19 authorized by the County, on Ames Lake. There are genuine issues of material fact as to this
20 point. Therefore, the Board does not base its granting of the summary judgment, on the
21 ground that approval of a variance for Peerenboom would constitute a grant of special
22 privilege. We do note with approval however, that the County has apparently, as a result of
23 Peerenboom's complaint, commenced an investigation into whether there are any illegal
24 shoreline structures on the Lake. The SMA authorizes numerous enforcement tools that are
25 available to the County, for this purpose RCW 90.58.210-230.

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2 XVIII

3 Any finding of fact deemed to be a conclusion of law is hereby adopted as such. From
4 the foregoing, the Board issues this:

5 ORDER


6 The County's denial of a shoreline variance to Peerenboom, and its order that he
7 remove the illegal structure, are affirmed.

8 DONE this 10th day of May, 1994

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10 SHORELINES HEARINGS BOARD

11 
ROBERT V. JENSEN, Presiding Officer

12 
RICHARD C. KELLEY, Member

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JAMES A. TUPPER, JR., Member

14 
BOBBI KREBS-MCMULLEN, Member

15 
ROBERT D. HINTON, Member

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